IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1092 OF 2005

Santosh Dattatray Mane. ..Appellant.

V/s.

Sudam Maruti Patil. ..Respondent.

Mr. S.D.Patil & Mr.P.P.Jadhav for appellant.

Mr.Nilesh S.Patil for Respondent.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 14, 2006.

P.C. :

1. Heard.

2. The limited grievance before this court is that the appellate court has not even adverted to the crucial question raised on behalf of the appellant expressly raised before the trial Court and in the appeal memo in ground No.9; thus, resulting in manifest injustice to the appellant. The argument seems to be attractive, but clearly overlooks the fact that the point regarding limitation was never agitated before the appellate Court. If that point was raised before the appellate Court I have no doubt in my mind that the appellate Court would have formulated that as a point for consideration in

paragraph-4 of the impugned Judgment. If the appellate Court had failed to do so, as the Judgment of the appellate Court, it is not in dispute was dictated in open court, the appellant through counsel ought to have brought this fact to the notice of the appellate Court instantly or atleast taking out formal application for speaking to the minutes, if so advised. The grievance that the point was asserted and not considered, cannot be allowed to be raised before the superior Court, which position is settled (see AIR 1982 S.C.1249). In the circumstances, as no other contention is raised, this appeal should fail, as it does not raise any substantial question of law. Hence dismissed.